APPENDIX A – OPINION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY DATED AUGUST 9, 2001

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

D.T.B., a minor child, by his next friend, DANIEL J. O'CALLGHAN,	:	Civil Action No. 01-630
Plaintiffs,	:	(JAG)
v.	:	**OPINION**
HON. JOHN J. FARMER, JR., *et al.*,	:	
Defendants.	:	

GREENAWAY, JR., District Judge

INTRODUCTION

This matter comes before the Court on the motion of Defendants Attorney General John J. Farmer, Jr. ("Farmer") and the Honorable John J. Harper, J.S.C., New Jersey Superior Court, Chancery Division-Family Part, Morris County ("Judge Harper") (collectively referred to hereafter as the "Defendants")[1] to dismiss Plaintiff Daniel

[1] Defendant David F. Salvaggio is listed as a party in the motion to dismiss submitted by the Attorney General. However, the motion is put forward by the Attorney General only as to Farmer and Judge Harper. Therefore, this Court will not rule on the motion to dismiss the complaint as to Salvaggio.

J. O'Callaghan's ("O'Callaghan")[2] complaint for lack of subject matter jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1). Farmer also urges dismissal of O'Callaghan's complaint for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6).[3] O'Callaghan asserts a cause of action against the Defendants for the deprivation of a right, privilege, or immunity secured to him, arising "under the federal right of privacy, the federal right to access to courts, Article IV, Section 2, Clause 1 of the Constitution ("the "Privileges and Immunities Clause"), and the First, Fifth, Seventh, Ninth, and Fourteenth Amendments to the Constitution." (Pl.'s Amend. Compl. ¶ 1.) Additionally, O'Callaghan alleges due process and equal protection claims arising under the Fourteenth Amendment. (Id.) O'Callaghan seeks declaratory and injunctive relief under the provisions of 42 U.S.C. §§ 1983[4] and 1985(3)[5] and 28

---

[2] Although O'Callaghan couches his complaint in a manner which would make it appear that he files his complaint on behalf of his son ("DTB"), in reality, O'Callaghan is alleging constitutional violations on the part of Farmer and Judge Harper against both himself and his son. For purposes of clarity, this Court will refer only to O'Callaghan. However, our analysis applies as to both O'Callaghan and DTB.

[3] Federal Rules of Civil Procedure 12(b) states, in pertinent part, that:

> [e]very defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter; ... (6) failure to state a claim upon which relief can be granted.

[4] 42 U.S.C. § 1983 (1994) provides, in pertinent part, that:

> [e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes or causes to be subjected, any citizen of the United Sates or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to

BEST AVAILABLE COPY

U.S.C. §§ 2201[6] and 2202.[7] For the reasons set forth below, this Court concludes that the motion to dismiss for lack of subject matter jurisdiction is GRANTED as to Defendants Farmer and Judge Harper, with prejudice.

BACKGROUND

Pro se Plaintiff Daniel J. O'Callaghan is the natural father of nine-year old Plaintiff DTB. (Pl.'s Amend. Compl. ¶ 12.) O'Callaghan filed suit against "VRB", the natural mother of DTB, in New Jersey Superior Court,

---

the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[5] 42 U.S.C. § 1985(3) (1994) provides, in pertinent part, that:

> [i]f two or more persons in any State or Territory conspire for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

[6] 28 U.S.C. § 2201 (1994) provides, in pertinent part, that:

> [i]n case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

[7] 28 U.S.C. § 2202 (1994) provides that:

> [f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

Chancery Division-Family Part, Morris County, on June 22, 2000, for paternity, custody, and/ or visitation concerning DTB, pursuant to the N.J. STAT. ANN. §§ 9:17-39, 40 (West 1993). (Id. at ¶ 7, 13.) Defendant Judge Harper presided over O'Callaghan's custody suit. (Id. at ¶ 7.) Following a hearing on August 25, 2000, Judge Harper terminated all overnight visitation for Plaintiff O'Callaghan with his son. (Id. at ¶ 42.) In or about late October, 2000, O'Callaghan petitioned the New Jersey Appellate Division and the New Jersey Supreme Court upon discretionary interlocutory motions for leave to appeal, including requests for federal constitutional relief. (Id. at ¶ 86.) On December 4, 2000, the Appellate Division denied interlocutory relief. (Id. at ¶ 89.) On January 24, 2001, the New Jersey Supreme Court denied interlocutory relief. (Id. at ¶ 115.)

During the early part of January 2001, O'Callaghan filed a complaint with the State Advisory Committee on Judicial Conduct relating to a December 8, 2000 proceeding regarding alleged abusive behavior on the part of Judge Harper. (Id.) On February 6, 2001, Judge Harper issued an order and letter decision, in which he dismissed O'Callaghan's Family Court complaint and directed sanctions against O'Callaghan in the amount of ten thousand dollars ($10,000). (Id. at ¶ 123.) Judge Harper dismissed O'Callaghan's complaint for custody and/ or visitation as a result of O'Callaghan's "failure to follow the orders of the court and O'Callaghan's repeated efforts to frustrate and delay the fact-finding process." (Let. Dec. at 7.) (Attached as Exhibit to Affadavit of O'Callaghan, Volume II, pg. 805.) Further, Judge Harper ordered sanctions in an effort to place responsibility for the delays in the Family Court case upon O'Callaghan. Id. In his decision, Judge Harper ordered non-overnight visitation to continue. Id.

Thereafter, on February 14, 2001, O'Callaghan

sought emergent relief from the Appellate Division, alleging a violation of constitutional safeguards. (Id. at ¶ 131.) On February 16, 2001, this application for emergent relief was denied. (Id.) Subsequently, on February 26, 2001, O'Callaghan sought interlocutory appellate relief on similar grounds in a motion for leave to appeal to the New Jersey Supreme Court, presented to the New Jersey Appellate Division. (Id. at ¶ 132.) However, on April 16, 2001, the Appellate Division denied O'Callaghan's motion for interlocutory relief. (Pl. Let. 2.)[8] The Appellate Division ruled that the February 6, 2001 order and letter decision by Judge Harper was a final order, and that the order may be appealed pursuant to a notice of appeal. (Id. at 3.) In turn, on April 25, 2001, O'Callaghan filed an application with the New Jersey Supreme Court for emergent and interlocutory relief. (Id. at 2.) In this application, O'Callaghan argued that the Appellate Division failed to review the substantive merit of any of his claims, and that further delay was harming his relationship with his son. (Id.) It appears that the application before the New Jersey Supreme Court is still pending.[9] In addition, it appears that in late April 2001, O'Callaghan filed a motion for leave to appeal with the Appellate Division once notified that the February 6, 2001 order and letter decision by Judge Harper constituted a "final order." (O'Callaghan's Supplemental Brief Upon Motion For Leave to Appeal and Brief Upon Appeal to the Superior Court of New Jersey-Appellate Division) (Attached as Exhibit to Affidavit of O'Callaghan, Volume III.) In his appeal to the Appellate Division, O'Callaghan raised many of the same arguments that have been raised in his federal

---

[8] "Pl. Let." Refers to Plaintiff O'Callaghan's letter to the Court dated April 27, 2001.

[9] To the best of this Court's knowledge from the respective parties' submissions, the application to the New Jersey Supreme Court is still pending.

civil rights complaint. The appeal to the Appellate Division also appears to be outstanding.[10]

On February 7, 2001, O'Callaghan filed a complaint in this Court alleging the aforementioned Civil Rights violations. (Pl.'s Amend. Compl. ¶ 130.) In response, on March 26, 2001, Defendants filed a motion to dismiss. On April 6, 2001, O'Callaghan amended his complaint. O'Callaghan raises approximately seventeen allegations of judicial misconduct in his amended complaint.[11] In his amended complaint, O'Callaghan initially requests a declaratory judgment, pursuant to 28 U.S.C. § 2201, that Judge Harper and Farmer violated O'Callaghan's right of access to courts, right to privacy, Fourteenth Amendment Due Process/ Equal Protection rights, and right to [*sic*] a jury trial. O'Callaghan further requests relief, pursuant to 42 U.S.C. §§ 1983 and 1985(3).[12] (Id. at ¶ 158.)

---

[10] This Court, in its best estimation following review of every document submitted by both parties, believes that an appeal to the Appellate Division regarding the final order of Judge Harper is also still outstanding.

[11] This Court will not review each allegation of judicial misconduct alleged by O'Callaghan. In O'Callaghan's fifty-page complaint, he recites in explicit detail, every proceeding that occurred before Judge Harper in O'Callaghan's Family Court case. For the purposes of this motion to dismiss, this Court finds it unnecessary to review O'Callaghan's allegations concerning misconduct on the part of Judge Harper.

[12] Specifically, O'Callaghan requests that this Court grant the following relief:

1. A declaration of violation of 42 U.S.C. § 1983;

2. A declaration of violation of 42 U.S.C. § 1985(3);

3. A declaration of unconstitutionality of New Jersey Court Rule 5:8B "Appointment of Guardian Ad Litem";

4. A declaration of unconstitutionality of New Jersey Court Rule 5:1-4, "Case Management Track System";

O'Callaghan further requests injunctive relief because he and his son are allegedly experiencing continuing irreparable injury and have no plain, speedy, or adequate remedy at law. (Id. at ¶ 166, 168.) In O'Callaghan's injunctive relief claim, he requests that this Court 1) enjoin enforcement of all orders, findings, decisions, and judgments issued in the Family Court case, 2) direct reinstatement of O'Callaghan's Family Court complaint, 3) direct a visitation rights hearing and custody trial in compliance with the State's "track system," 4) direct the transfer of the case to another Family Court judge, and 5) direct that all proceedings and the record in the Family Court case be made confidential. (Id. at ¶ 168.)

Defendants move to dismiss on all counts.

---

5. A declaration of unconstitutionality of New Jersey Court Rule 5;3-3, "Appointment of Experts";

6. A declaration of unconstitutionality of New Jersey Court Rule 5:8-1, *et seq.*, "Custody of Children";

7. A declaration of violation of DTB's and O'Callaghan's right of access to the courts;

8. A declaration of violation of DTB's and O'Callaghan's right of privacy;

9. A declaration of violation of DTB's and O'Callaghan's Fourteenth Amendment rights to due process of law and to equal protection of the laws;

10. a declaration of violation of O'Callaghan's right to a jury trial;

11. a declaration that there existed a plan and conspiracy, in violation of 42 U.S.C. § 1983;

12. a declaration that there has exited a plan and conspiracy, in violation of 42 U.S.C. § 1985(3);

13. grant of injunctive relief, pursuant to 42 U.S.C. § 1983, to the extent authorized by controlling law, and pursuant to 42 U.S.C. § 1985(3) upon the grounds identified herein.

(Pls.'s Amend. Compl. ¶ 179.)

Defendants assert that the Rooker-Feldman doctrine precludes this Court from exercising subject matter jurisdiction. Furthermore, Defendants argue that this Court should not exercise subject matter jurisdiction as a result of the Younger, Pullman, and/ or Burford abstention doctrines. Moreover, Farmer claims that O'Callaghan's complaint, with respect to himself, must be dismissed for failure to state a claim upon which relief can be granted. Finally, Defendants assert that the complaint must be dismissed because O'Callaghan has failed to show that he is entitled to injunctive relief.

DISCUSSION

The Defendants' primary argument is that this Court does not have jurisdiction to review any of the claims O'Callaghan brought forward. Section 1257 of Title 28 provides that "[f]inal judgments or decrees rendered by the highest court of a State ... may be reviewed by the Supreme Court." 28 U.S.C. § 1257 (1994). In District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) and Rooker v. Fidelity Trust Company, 263 U.S. 413 (1923), the Supreme Court interpreted 28 U.S.C. § 1257 to bar direct review of state supreme court decisions in any federal court except the Supreme Court of the United States. A district court has "no authority to review final judgments of a state court in judicial proceedings" and "[r]eview of such judgment may be had only in this Court." Feldman, 460 U.S. at 482. The doctrine also applies to final decisions of lower state courts. Port Auth. Benevolent Ass'n. v. Port Auth. of N.Y. and N.J., 973 F.2d 169, 177 (3d Cir. 1992).

The Supreme Court noted that "[i]f the constitutional claims presented to a United States District Court are inextricably intertwined with the state court's [decision] in a judicial proceeding, then the district court is in essence being called upon to review the state court decision. This the district court may not do." Feldman,

460 U.S. at 483 n. 16.

In Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir. 1989), the Third Circuit quoting Justice Marshall in Pennzoil v. Texaco, Inc. 481 U.S. 1 (1987), provided guidance in determining when a constitutional claim is "inextricably intertwined" with a particular decision of a state court for purposes of barring the district court's jurisdiction to hear the case under the Rooker-Feldman doctrine. The court stated that:

> [w]hile the question of whether a federal constitutional challenge is inextricably interwined with the merits of a state court judgment may sometimes be difficult to answer, it is apparent, as a first step, that the federal claim is inextricably intertwined with the state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state court judgment.

Centifanti, 865 F.2d at 1430 (quoting Pennzoil, 481 U.S. at 25.)

Thus, Rooker-Feldman applies only when in order to grant the federal plaintiff the relief sought, the federal court must determine that the state court judgment was erroneously entered or must take action that would render that judgment ineffectual. Focus v. Allegheny County Ct. of C.P., 75 F.3d 834 (3d Cir. 1996). Moreover, the Supreme Court has emphasized that a district court still does not have jurisdiction over "challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional." Stern v. Nix, 840 F.2d 208, 211 (3d Cir. 1988) (citing Feldman, 460 U.S. at 486). Therefore, district courts must evaluate whether the

relief requested by the complainant would void the state court's ruling. Accordingly, a compliant which essentially appeals a final state court decision must be dismissed for lack of subject matter jurisdiction.

O'Callaghan raises two different types of claims in his complaint. This Court will first address O'Callaghan's claim that a multitude of his constitutional rights were violated by Judge Harper in his family court proceeding.[13] As previously noted, Rooker-Feldman precludes a federal district court from evaluating constitutional claims that are "inextricably intertwined" with a state court judicial proceeding. Feldman, 460 U.S. at 483 n. 16. The specific Rooker-Feldman jurisdictional inquiry presented in this case is whether O'Callaghan's claims of the deprivation of numerous constitutional safeguards are "inextricably intertwined" with the Family Court's decisions Judge Harper reached.

O'Callaghan asks this Court to review his state court proceedings and to arrive at the conclusion that Judge Harper violated his constitutional rights. It is clear from both the recitation of facts and the relief sought that O'Callaghan is attempting to appeal the decision reached by Judge Harper. O'Callaghan submits approximately 40 pages of facts detailing what occurred at the state trial court level and how the alleged constitutional violations occurred. Theses constitutional claims are unquestionably "inextricably intertwined" with the state court judicial proceeding.

O'Callaghan then requests that this Court grant declaratory and injunctive relief, which would have the effect of reversing the state court's decision. This is not permissible under the Rooker-Feldman doctrine. Focus, 75 F.3d at 834. A careful review of O'Callaghan's claims has convinced this Court that O'Callaghan is essentially asking

---

[13] See supra page 2.

this Court to reverse the decisions made by the state court. O'Callaglhan has not even tried to hide the fact that the purpose of his lawsuit is to enjoin the enforcement of the state court's decision. (Pl. Amend. Compl. ¶ 172.) In addition, in order to evaluate O'Callaghan's constitutional claims (that he was denied equal protection and due process), this Court would have to determine that the state court "wrongly decided" the custody and/ or visitation issue. Centifanti, 865 F.2d at 1430. As previously discussed, this is not permissible under Rooker-Feldman. See Logan v. Lillie, 965 F. Supp. 695, 699 (E.D. Pa. 1997). Therefore, this Court lacks subject matter jurisdiction to address O'Callaghan's claims regarding the constitutionality of the state court proceedings.

A district court's role in a case such as the one at bar becomes slightly more complicated when presented with general facial constitutional challenges to state laws or rules. As previously noted, O'Callaghan urges that New Jersey Court Rules 5:1-4, 5:3-3, and 5:8-1 are unconstitutional. Under Rooker-Feldman, district courts have subject matter jurisdiction to review general challenges to state rules or laws. Feldman, 460 U.S. at 483. Thus, the jurisdictional issue in this case turns upon whether O'Callaghan's constitutional challenges should be viewed as 'general challenges" or as a challenge to a state court decision in a "particular case." Stern, 840 F. 2d at 212.

In Stern, the Third Circuit dismissed a complaint by a disbarred attorney challenging two Pennsylvania disciplinary rules. The complaint expressly indicated that the attorney did not seek direct review, but intended to generally challenge the constitutionality of the rules. Id. The Third Circuit concluded that "[d]espite this genuflecting to the Rooker-Feldman doctrine," the purpose of the action was to reverse the decision of the Supreme Court of Pennsylvania to disbar the plaintiff. Id. The

Court reasoned that the complaint contained excessive factual detail and sought a permanent injunction preventing the Supreme Court of Pennsylvania from disbarring attorney without employing certain procedural safeguards. Id. The Third Circuit concluded that:

> [i]n a sense, any attempt to enjoin the enforcement of a state court judgment, even conditionally, as in this case, is suspect. If it granted Stern's requests, the federal court would effectively reverse the state court judgment, and thus "review [a] final judgment [ ] of a state court in judicial proceedings," contrary to Rooker-Feldman.

Id.

O'Callaghan's constitutional challenges of the aforementioned New Jersey Court rules are similar to those put forward in Stern. While it appears from O'Callaghan's complaint that he facially challenges the New Jersey Court Rules, problems nonetheless arise when analyzing the remedy that he proposes. O'Callaghan requests that this Court grant declaratory as well as injunctive relief. As O'Callaghan himself points out, he has no plain, speedy, or adequate remedy at law and that therefore injunctive relief is necessary. (Pl. Amend. Compl. ¶ 170.) Specifically, O'Callaghan requests that if this court were to find any of the three New Jersey Court Rules unconstitutional, the Court should "enjoin enforcement of all orders, findings, decisions, and judgments, including the letter decision and the ten-thousand dollar ($10,000) order, issued in the Family Court case." (Id. at ¶ 172.) Injunctive relief in this case would effectively reverse the state court judgment, and thus "review a final judgment of a state court in a judicial proceeding," contrary to Rooker-Feldman. Stern, 840 F.2d at 212. Therefore, this Court interprets O'Callaghan's facial constitutional challenges as nothing more than an

attempt to have this Court reverse a state court decision.[14]

This court must emphasize the fact that O'Callaghan has not exhausted his state avenues of appeal. At this time, to the best of this Court's knowledge, two appeals (one to the Appellate Division and one to the New Jersey Supreme Court) remain outstanding. This Court will not analyze constitutional questions that have been posed to the Appellate Division and the New Jersey Supreme Court but have not yet been answered. This would be in clear violation of the Rooker-Feldman doctrine. Even if the Appellate Division denies his appeal, O'Callaghan can still appeal that denial to the New Jersey Supreme Court. Moreover, if the New Jersey Supreme Court denies an appeal of the Appellate Division's decision, the correct avenue for O'Callaghan would be to appeal that decision to the Supreme Court of the United States. See 28 U.S.C. § 1257. This Court has no role in this process. As this Court has already discussed, O'Callaghan's facial challenges are actually a disguised attempt to seek review of the Family Court decision. See Stern, 840 F.2d 208. Accordingly, this Court will grant the motion to dismiss because this Court lacks the subject matter jurisdiction to hear the case under the Rooker-Feldman doctrine.[15]

---

[14] In light of the fact that this Court finds that the Rooker-Feldman doctrine applies, we need not address the Younger, Pullman, and Burford abstention doctrines that were raised by the Defendants in their motion to dismiss.

[15] See also Logan v. Lillie, 965 F. Supp. 695 (E.D. Pa. 1997):

> [t]he Court's decision is consistent with the clear trend of case authority holding that actions brought under §§ 1983 and 1985 but which are bottomed on claims of constitutional violations arising out of state court child custody proceedings are "inextricably intertwined" with such custody proceedings and therefore are barred under the Rooker-Feldman doctrine from the subject matter jurisdiction of the federal courts. See e.g., United States ex rel. Verdone v. State of Wis., 1995 WL 94914 at *2 (7th Cir. 1995) (finding that district court was barred under Rooker-Feldman from

Conclusion

For the foregoing reasons, this Court grants Judge Harper and Attorney General Farmer's motion to dismiss.

An appropriate order has been attached.

S/ Joseph A. Greenaway, Jr.
JOSEPH A. GREENAWAY, JR., U.S.D.J.

DATED: August 9th, 2001

---

hearing federal civil rights action bottomed on claims of constitutional violations arising out of state court custody proceedings); Chrissy F. v. Miss. Dep't of Pub. Welfare, 995 F.2d 595, 598-599 (5thCir. 1993) (finding that district court was barred under Rooker-Feldman from hearing federal civil rights action bottomed on claims of constitutional violations arising out of state court custody proceedings), cert. denied, 510 U.S. 1214; Liedel v. Juv. Ct. of Madison County, Ala., 891 F.2d 1542, 1545-1546 (11th Cir. 1990) (finding that district courts have no jurisdiction under Rooker-Feldman to hear § 1983 actions bottomed on constitutional claims arising out of state court child custody proceedings); Thompson v. McFatter, 951 F. Supp. 221, 223-223 (M.D. Ala. 1996) (finding that district court was barred under Rooker-Feldman from hearing a § 1983 action where plaintiff's complaint alleged constitutional violations of his rights of association, due process, and equal protection arising out of state court custody proceedings); Behr v. Snider, 900 F. Supp. 719, 724-725 (E.D. Pa. 1995) (finding that district court was barred under Rooker-Feldman from hearing federal civil rights action brought under §§ 1983 and 1985 bottomed on claims for declaratory and injunctive relief and monetary damages for alleged due process, equal protection, and other constitutional violations arising out of state court custody proceeding).

965 F. Supp. at 699 n.6.

APPENDIX B – ORDER OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY DATED AUGUST 9, 2001

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

D.T.B., a minor child, by his, next friend, DANIEL J. O'CALLGHAN,	:	Civil Action No. 01-630 (JAG)
Plaintiffs,	:	
v.	:	**ORDER**
HON. JOHN J. FARMER, JR., *et al.*,	:	
Defendants.	:	

This matter having come before the Court on the motion of Attorney General John J. Farmer and the Honorable John J. Harper, J.S.C., New Jersey Superior Court, Chancery Division-Family Part, Morris County (Defendants), to dismiss Daniel O'Callaghan's Complaint against Defendants for lack of subject matter jurisdiction, pursuant to Federal Rules of Civil Procedure 12 (b)(1); and it appearing that O'Callaghan brought a civil suit against his former wife concerning the paternity, custody, and/ or visitation with respect to their child in New Jersey Superior Court, Chancery Division-Family Part, Morris County before Defendant Judge Harper; and it further appearing that Judge Harper extinguished O'Callaghan's overnight visitation privileges with his child; and it further appearing that O'Callaghan made numerous applications to both the New Jersey Superior Court, Appellate Division ("Appellate Division") and the New Jersey Supreme Court ("Supreme

Court") concerning interlocutory and emergent relief; and it further appearing that the Appellate Division and the Supreme Court denied O'Callaghan's motions for relief; and it further appearing that appeals to the Appellate Division and the Supreme Court remain outstanding; and it further appearing that O'Callaghan filed a Complaint with this Court asserting that Defendants Harper and Farmer violated several of his constitutional rights, including due process and equal protection claims arising under the 14th Amendment; and it further appearing that O'Callaghan seeks declaratory and injunctive relief; and this Court having concluded that this matter should be dismissed, consistent with District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) and Rooker v. Fidelity Trust Company, 263 U.S. 413 ('923) (Rooker-Feldman doctrine); and this Court further concluding that O'Callaghan's allegations against Defendants are "inextricably intertwined" with the Family Court's decision; and this Court having further concluded that O'Callaghan's Complaint is essentially an appeal of a state court decision; and for other good cause shown;

IT IS ON THIS 9th day of August, 2001;

ORDERED that Defendants' motion to dismiss O'Callaghan's Complaint as to Judge Harper and Attorney General Farmer is GRANTED and O'Callaghan's Complaint is dismissed with prejudice as to those two parties; and

IT IS FURTHER ORDERED that an opinion will issue in due time; and

IT IS FURTHER ORDERED that a copy of this Order be served on all parties within (7) days of this Order

S/Joseph A. Greenaway, Jr.

JOSEPH A. GREENAWAY, JR., U.S.D.J.

APPENDIX C – AMENDED ORDER OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY DATED DECEMBER 17, 2001

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

D.T.B., a minor child, by his next friend, DANIEL J. O'CALLGHAN,	:	Civil Action
	:	No. 01-630
Plaintiffs,	:	(JAG)
	:	
v.	:	
	:	**AMENDED**
HON. JOHN J. FARMER, JR., *et al.*,	:	**ORDER**
	:	
Defendants.	:	
	:	

GREENAWAY, JR., U.S.D.J.

This matter having come before the Court on the motion of Attorney General John J. Farmer and the Honorable John J. Harper, J.S.C., New Jersey Superior Court, Chancery Division-Family Part, Morris County ("Defendants"), to dismiss Plaintiff Daniel O'Callaghan's ("O'Callaghan") Complaint against Defendants for lack of subject matter jurisdiction, pursuant to Federal Rules of Civil Procedure 12 (b)(1); and it appearing that O'Callaghan amended his Complaint on April 9, 2001 ("Amended Complaint"); and this Court having previously concluded that the Amended Complaint should be dismissed in its August 9, 2001 Order, consistent with the District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) and Rooker v. Fidelity Trust Company,

263 U.S. 413 (1923) (Rooker-Feldman doctrine); and it further appearing that the parties are unclear as to whether the August 19, 2001 Order addressed O'Callaghan's Amended Complaint; let it be clear that this Court did contemplate and address O'Callaghan's Amended Complaint it its August 19, 2001 Order;

IT IS ON THIS 17th day of December, 2001:

ORDERED that Defendants' motion to dismiss O'Callaghan's Amended Complaint as to Judge Harper and Attorney General Farmer is GRANTED and O'Callaghan's Amended Complaint is dismissed with prejudice as to those two parties; and

IT IS FURTHER ORDERED that a copy of this Order shall be served on all parties within (7) days of this Order.

S/Joseph A. Greenaway, Jr.

JOSEPH A. GREENAWAY, JR., U.S.D.J.

APPENDIX D -- ORDER OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY DATED SEPTEMBER 26, 2003

Michael S. Schwartz, Esq.
HEIM & MCENROE
12 Vreeland Road
P.O. Box 975
Florham Park, NJ 07932
(973) 360-6200
Attorneys for Defendant
Mathias R. Hagovsky

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

D.T.B., a minor child, by his next friend, DANIEL J. O'CALLAGHAN and DANIEL J. O'CALLAGHAN, Pro Se, on his own behalf, Plaintiffs, v. HON. JOHN J. FARMER, JR. in his past or present official capacity as Attorney General of the State of New Jersey; HON. JOHN J. HARPER in in his past or present capacity as Justice of the Superior Court of New Jersey, Chancery Division, Family Part; ANN T. SCUCCI; MATHIAS R. HAGOVSKY and DAVID F. SALVAGGIO, Defendants.	CIVIL ACTION 2001-CV-630(JAG) 2001-CV-4032((JAG) **ORDER GRANTING SUMMARY JUDGMENT**

This matter having come before the Court on Defendant Mathias R. Hagovsky's Motion for Summary Judgment pursuant to Federal Rules of Civil Procedure 56(b), and it appearing that Plaintiff's Complaint against Defendant Mathias R. Hagovsky lacks subject matter jurisdiction consistent with District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) and Rooker v. Fidelity Trust Company 263 U.S. 413 (1923) (Rooker-Feldman doctrine); and this Court concluding that regardless of subject matter jurisdiction, Defendant Mathias R. Hagovsky is immune from liability, as a court appointed psychologist pursuant to Hughes v. Long 242 F.3d 121 (3rd Cir. 2001) and the Court having considered all papers submitted and having entertained oral argument on September 22, 2003;

IT IS hereby O R D E R E D that Defendant Mathias R. Hagovsky's Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56(b) is hereby granted; and it is further

O R D E R E D that plaintiff's Complaints are hereby dismissed with prejudice for lack of subject matter jurisdiction; and it is further

O R D E R E D that a copy of this Order be served upon all counsel within seven (7) days of the date hereof.

S/Joseph A. Greenaway, Jr.

JOSEPH A. GREENAWAY, JR., U.S.D.J.

S/ 9-26-03

APPENDIX E – OPINION OF UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED SEPTEMBER 14, 2004

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

D.T.B., a minor child, by his next friend,
Daniel J. O'Callaghan; DANIEL J. O'CALLAGHAN,
Appellants

v.

JOHN J. FARMER, Hon., in his past or present official capacity as Attorney General of the State of New Jersey; JOHN J. HARPER, Hon., in his past or present capacity as Justice of the Superior Court of New Jersey, Chancery Division, Family Part; DAVID F. SALVAGGIO; MATHIAS R. HAGOVSKY; ANN T. SCUCCI

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

(No. 01-cv-00630)
Hon. Joseph A. Greenaway, Jr.

Submitted Under Third Circuit LAR 34.1(a)
June 16, 2004

Before: ALITO and SMITH, Circuit Judges, and DUBOIS, District Judge*
(Opinion Filed: September 14, 2004

---

*Hon. Jan E. DuBois, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

OPINION OF THE COURT

PER CURIAM:

This appeal stems from litigation in the New Jersey Superior Court, Family Part. Plaintiff Daniel J. O'Callaghan filed a paternity, custody, and / or visitation action against V.R.B., the mother of O'Callaghan's minor son. Defendant Judge Harper presided over the case and terminated O'Callaghan's overnight visitation rights. After O'Callaghan failed to obtain interlocutory relief in the Appellate Division and the New Jersey Supreme Court, he filed a complaint against Judge Harper with the State Advisory Committee on Judicial Conduct, but this also proved unsuccessful. Judge Harper eventually dismissed O'Callaghan's complaint and imposed sanctions for procedural violations. O'Callaghan then made additional efforts to obtain appellate review in the New Jersey courts.

Greatly dissatisfied with the state court litigation, O'Callaghan subsequently filed this action in federal court asserting numerous federal constitutional and statutory claims against the judge, the former state attorney general, a court appointed psychologist, and others. The District Court dismissed the plaintiffs' claims against the judge and former attorney general pursuant to the Rooker-Feldman doctrine and issued a detailed opinion explaining the basis of its decision. For essentially the reasons stated in that opinion, we hold that these claims were properly dismissed. We appreciate the importance of O'Callaghan's concerns, but the claims asserted in the present federal action are inextricably intertwined with the state court decisions, and the lower federal courts accordingly lack jurisdiction to entertain those claims.

BEST AVAILABLE COPY

The District Court granted summary judgment in favor of the court-appointed psychologist, holding that she was entitled to absolute immunity under Hughes v. Long, 242 F.3d 121 (3d Cir. 2001). We agree with this ruling.

We have carefully considered all of the arguments advanced by the appellant but see no ground for reversing the District Court's disposition of any of the claims asserted against any of the defendants. Accordingly, the orders from which the appeal were taken are affirmed.

APPENDIX F – JUDGMENT OF UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED SEPTEMBER 14, 2004

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-4259

D.T.B., a minor child, by his next friend, Daniel J. O'Callaghan; DANIEL J. O'CALLAGHAN,
Appellants

v.

JOHN J. FARMER, Hon., in his past or present official capacity as Attorney General of the State of New Jersey; JOHN J. HARPER, Hon., in his past or present capacity as Justice of the Superior Court of New Jersey, Chancery Division, Family Part; DAVID F. SALVAGGIO; MATHIAS R. HAGOVSKY; ANN T. SCUCCI

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

(No. 01-cv-00630)
Hon. Joseph A. Greenaway, Jr.

Submitted Under Third Circuit LAR 34.1(a)
June 16, 2004

Before: ALITO and SMITH, Circuit Judges, and DUBOIS, District Judge[1]

[1]Hon. Jan E. DuBois, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

JUDGMENT

This cause came to be heard on the record from the United States District Court for the District of New Jersey and was submitted under Third Circuit LAR 34.1(a) on June 16, 2004.

After careful review and consideration of all contentions raised by the appellant, it is hereby ORDERED and ADJUDGED that the judgments of the District Court entered on April 4, 2003 and November 26, 2003, be and is hereby AFFIRMED. Costs taxed against appellant. All in accordance with the opinion of this Court.

ATTEST:

S/ Marcia M. Waldron

Clerk

DATED: September 14, 2004

Certified as a true copy and issued in lieu of a formal mandate on October 28, 2004.

Teste:

S/ Marcia M. Waldron

Clerk, United States Court of Appeals for the Third Circuit

APPENDIX G – DECISION UPON SUR PETITION FOR REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED OCTOBER 20, 2004

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-4259

D.T.B., a minor child, by his next friend,
Daniel J. O'Callaghan; DANIEL J. O'CALLAGHAN,
Appellants

v.

JOHN J. FARMER, Hon., in his past or present official capacity as Attorney General of the State of New Jersey; JOHN J. HARPER, Hon., in his past or present capacity as Justice of the Superior Court of New Jersey, Chancery Division, Family Part; DAVID F. SALVAGGIO; MATHIAS R. HAGOVSKY; ANN T. SCUCCI

SUR PETITION FOR REHEARING

Present: SCIRICA, Chief Judge, SLOVITER, NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, CHERTOFF, FISHER, and VAN ANTWERPEN, Circuit Judges, and DuBOIS, District Judge*

The petition for rehearing filed by appellants in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service,

*As to panel rehearing only.

and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court

/s/ Samuel A. Alito, Jr.

Circuit Judge

DATED: October 20, 2004

lwc/cc: Daniel J. O'Callaghan, Esq.
George N. Cohen, Esq.
Michael S. Schwartz, Esq.

APPENDIX H – FEDERAL RULES OF CIVIL PROCEDURE (IN PART)

Federal Rules of Civil Procedure, Rule 12 (b), in part:

Rule 12. Defenses and Objections

...

(b) How presented. Every defense, in law or fact, ... shall be asserted in the responsive pleading ... except that the following defenses may ... be made by motion: (1) lack of jurisdiction over the subject matter, ... (6) failure to state a claim upon which relief can be granted ...

Federal Rules of Civil Procedure, Rule 56, in part:

Rule 56. Summary Judgment.

...

(b) For Defending Party. A party against whom a claim, ... is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

APPENDIX I – PARENTAGE ACT, FAMILY THERAPIST PRIVILEGE

New Jersey Parentage Act

9:17-39. Parent and child relationship defined.

As used..., "parent and child relationship" means the legal relationship existing between a child and the child's natural or adoptive parents, incident to which the law confers or imposes rights, privileges, duties, obligations. It includes the mother and child relationship and the father and child relationship.

9:17-40. Extent of parent and child relationship.

The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

9:17-42. Closed court; confidentiality of records.

Notwithstanding any other law concerning public hearings and records, any action or proceeding held under this act, shall be held in closed court … all papers and records and any information … are confidential….

9:17-45. Parties. ….

(a) A child, … the natural mother, … a man alleged or alleging himself to be the father … may bring or defend an action or be made a party … at any time for the purpose of determining the existence or nonexistence of the parent-child relationship.

Family Therapist Privelege (R. of Evidence 510)

A communication between a marriage and family therapist and the person or persons in therapy shall be confidential and its secrecy preserved. This privilege shall not be subject to waiver …

APPENDIX J -- FAMILY COURT RULES

R. 5:1-4. Differentiated Case Management.

(a) Case Management Track; Standards for Assignment. Except for summary actions, every civil family action shall be assigned, ... to one of the following tracks as follows:

(1) *Priority Track*. The action shall be assigned ... if it involves contested custody or parenting time issues.

(2) *Complex Track*. The action shall be assigned ... [if] likely ... disproportionate expenditure of ... resources. ....

(3) *Expedited Track*. The action shall be assigned..promptly tried...[A married family] dissolution action shall be assigned to the expedited track....

(4) *Standard Track*. Any action not qualifying for ... [above] shall be assigned to the standard track.

(b) Procedure for Track Assignment. The presiding judge...shall make the track assignment..after all parties have filed Case Information Statements..R. 5:5-2 or after the case management conference..R. 5:5-6 ...The parties shall be promptly advised by the court of the track assignment.

R. 5:3-3. Appointment of Experts. ...

(c) Selection of Experts. ...The court shall establish the scope of the expert's assignment in the order of appointment ....

(d) Investigation by Experts. ... The parties shall be entitled to have their attorneys and/ or experts present during any examination ...

R. 5:4-1. Process.

(a) Summons Generally. ....

(b) Summons, Summary Family Action. In every family action required or permitted ... to proceed summarily, a summons shall issue .... The summons shall comply with ... [civil practice rules] except that in lieu of requiring an answer it shall notify the defendant to appear at the time, date and place therein set forth to answer the complaint, a copy of which shall be annexed thereto. It shall also notify the defendant that unless the defendant appears ... an order may be entered by default...

R. 5:4-2. Complaint.

(a) Complaint Generally.

(1) *Caption.*

(2) *Contents.* ... [S]tatement of the essential facts ... relief sought ...

In any non-dissolution action ... in which paternity was previously acknowledged ..., a copy of the Certificate of Parentage or other written acknowledgment ... shall be filed with the complaint for support.

....

R. 5:4-3. Answer.

(a) Generally. Except as otherwise provided by paragraph (b) hereof or by any other rule or statute, a defendant in a family action shall file an answer... R. 4:5-3 [civil practice rules] or a general appearance and, without filing an answer, be heard on issues of custody of children, parenting time or visitation ...

(b) In summary family actions in which the process fixes a return day, the defendant need not file an answer, ... in order to be heard if the defendant appears on the return day.

R. 5:5-2. Case Information Statement.

(a) Applicability. The case information statement ... shall be filed and served in all contested family actions, except summary actions, in which there is any issue as to custody, support, alimony or equitable distribution. In all other family actions, a case information statement may be required by order on motion of the court or a party.

(b) Time and Filing. ... [A] case information statement ... (a) shall be filed by each party ... within 20 days after the filing of an answer or appearance. .... The court ... may ... dismiss a party's pleadings for failure to have filed a Case Information Statement. If dismissed, said pleadings shall be subject to reinstatement upon such conditions as the court may deem just.

R. 5:5-6. Case Management Conferences in Civil Family Actions.

(a) Priority in Complex Actions. ... [A]n initial case management conference ... shall be held within 30 days after ... last ... responsive pleading ... . Following the conference, the court shall enter an initial case management order ... scheduling a second case management conference ... The second ... order shall ... fix a firm trial date.

(b) Standard and Expedited Cases. [A] case management conference ... shall be held within 30 days after .. last ... responsive pleading.... Following the conference, the court shall enter a case management order fixing ... firm trial date.

R. 5:6. Summary Support Action for Support.

5:6-1. When and By Whom Filed. ... [A] summary action for support may be brought by either the party entitled thereto or an assistance agency ...

5:6-3. Hearing. The court shall hear and determine the matter in a summary manner on the return day fixed in the process ...

R. 5:8. Custody of Children.

5:8-1. Investigation Before Award. In family actions where the court finds that the custody of children is a genuine and substantial issue the court shall refer the case to mediation .... If the mediation is not successful ... the court may ... require an investigation to be made by the county probation office .... [T]he probation office shall file its report with the court no later than 45 days after its receipt of the ... order requiring the investigation ...

5:8-5. Custody and Parenting Time/ Visitation Plans...

(a) In any family action in which the parties cannot agree to ... custody or parenting time/ visitation ..., the parties must each submit a ... [Parenting Plan] ... no later than 75 days after the last responsive pleading ...

(b) ....

(c) Failure to comply with the ... [Parenting Plan] may result in ... dismissal of ... pleadings .... Dismissed pleadings shall be subject to reinstatement upon such conditions as the court may order.

5:8-6. Trial of Custody Issue. Where the court finds that the custody of children is a genuine and substantial issue, the court shall set a hearing date no later than 3

months after the last responsive pleading. .... As part of the custody hearing, ... conduct an interview with the ... [child] .... A ... record shall be made of the entire interview. Transcripts thereof shall be provided to counsel and the parties upon request ....

R. 5:8A, Appointment of Counsel for Child.

In all cases where custody or parenting time/ visitation is an issue, the court may ... appoint counsel on behalf of the child or children .... The appointment ... should occur when the trial court concludes that a child's best interest is not being sufficiently protected by the attorneys for the parties ....

R. 5:8B, Appointment of Guardian ad Litem.

Appointment. In all cases in which custody or parenting time/ visitation is an issue, a guardian ad litem may be appointed by court order to represent the best interests of the child or children if the circumstances warrant such an appointment ... The guardian ad litem shall file a written report with the court setting forth findings and recommendations and the basis thereof, and shall be available to testify and shall be subject to cross-examination thereon.

(a) Objection or Refusal of Appointment. A proposed guardian ad litem shall have the right to consent or to decline to serve as such, notice of such decision to be in writing to the court with copies to counsel. The parties shall have the right to object to the person appointed as guardian ad litem on good cause shown.

(b) Term. ....

(c) Fee. The hourly rate to be charged by the guardian ad litem shall be fixed in the initial appointment order and the guardian ad litem shall

submit informational monthly statements to the parties. ....

* * * * *

Official Comment for Rules 5:8A and 5:8B

The purpose of Rules 5:8A and 5:8B is to eliminate the confusion between the role of a court-appointed counsel for a child and that of a court-appointed guardian ad litem (GAL). ....

A ... counsel's services are to the child. Counsel acts as an independent legal advocate ... active part in the hearing ... If the purpose of the appointment is for legal advocacy, then counsel ... appointed.

A ... guardian ad litem services are to the court on behalf of the child. The GAL acts as an independent factfinder, investigator and evaluator... .... If the purpose of the appointment is for independent investigation and factfinding, then a GAL ... appointed.
....

These rules are not intended to expand the circumstances when such appointments are to be made; neither are these appointments to be made routinely.
...[1994]

R. 5:14. Proceedings to Determine Parent-Child Relationship.

5:14-1. Complaint, Parties. The person, official or agency authorized by law shall institute proceedings by a verified complaint. The natural mother, the man presumed by law to be the natural father, anyone whose name appears on the birth certificate and anyone who has attempted to file an acknowledgment of paternity ... shall be made parties to the action. .... The complaint sent to the alleged father shall include a Certificate of Parentage ...

APPENDIX K – FAMILY COURT COMPLAINT

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION – FAMILY PART
MORRIS COUNTY

DOCKET NO. FD-14-000-....

CIVIL ACTION COMPLAINT

O'CALLAGHAN, DANIEL J.
(PUTATIVE FATHER)

VS.
[VRB]
(NAT MOTHER)

(X) PATERNITY
( ) CUSTODY
( ) SUPPORT
(X) VISITATION
( ) MEDICAL SUPPORT

PLA ADDRESS: ... BROOKLYN NY ...

DEF ADDRESS: ... CHESTER NJ ...

THE CHILD(REN) ARE:

NAME	DATE OF BIRTH
[DTB]	06/19/1992

RESIDING AT
CHESTER NJ ...

RESIDING WITH/ RELATIONSHIP
[VRB] NAT MOTHER

FILED

SUPERIOR COURT'OF NEW JERSEY

JUN 22 2000

S/ DEPUTY CLERK

(X) 1. PLAINTIFF SEEKS ADJUDICATIO OF PATERNITY FOR THE CHILD(REN) NAMED ON PAGE 1

( ) 2. PLAINTIFF SEEKS ESTABLISHMENT OF SUPPORT ORDER …

( ) 3. …

( ) 4. PLAINTIFF BELIEVES THAT IN THE BEST INTEREST OF THE CHILD(REN) CUSTODY SHOULD BE GRANTED TO THE PLAINTIFF.

(X) 5. PLAINTIFF SEEKS AN ORDER OF THIS COURT GRANTING/ DENYING REASONABLE RIGHTS OF VISITAITON.

( ) 6….

( ) 7. COMMENTS:

CERTIFICATION …

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILLFULLY FALSE, I AM SUBJECT TO PUNISHMENT.

S/ 6/22/2000 S/ Daniel J. O'Callaghan

WITNESS DATE PLAINTIFF